

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

**Travis Wayne Tolley,**

**Plaintiff,**

**v.**

**Civil Action No. 7:19cv00863**

**Ben Caldwell, et al,**

**Defendant.**

**NOTICE**

This case is before the Court pursuant to Defendant's Motion to Dismiss, docket #41 and Motion for Summary Judgment, docket #43 filed 8/12/2020. The Court will give Plaintiff twenty-one (21) days from the date of this Notice to submit any further counter-affidavits or other relevant evidence contradicting, explaining or avoiding Defendant's evidence. Both sides are advised that if documents or affidavits outside the pleadings are submitted by either party, any remaining motion(s) to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure may be considered as motion(s) for summary judgment under Rule 56 of the Federal Rules of Federal Civil Procedure.

If Plaintiff does not respond to Defendant's pleadings, the Court will assume that Plaintiff has lost interest in the case, and/or that Plaintiff agrees with what the Defendant states in their responsive pleading(s). If Plaintiff wishes to continue with the case, it is necessary that Plaintiff respond in an appropriate fashion. Plaintiff may wish to respond with counter-affidavits or other additional evidence as outlined above. However, if Plaintiff does not file some response within the twenty-one (21) day period, the Court may dismiss the case for failure to prosecute.

Issued and mailed this 13th day of August, 2020.

**JULIA C. DUDLEY, CLERK**

By: s/S. Taylor  
Deputy Clerk

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

NOTICE TO PARTIES OF RIGHT TO CONSENT TO  
JURISDICTION OF UNITED STATES MAGISTRATE JUDGE

Travis Wayne Tolley  
Plaintiff(s)

DATE: August 13, 2020

vs.

CIVIL ACTION NO. 7:19cv00863

Ben Caldwell, et al  
Defendant(s)

In accordance with the provisions of Title 28, U.S.C. Sec. 636(c), and Fed.R.Civ.P. 73, you are hereby notified that a United States Magistrate Judge of this district court is available to exercise the court's jurisdiction and to conduct any or all proceedings in this case including a jury or nonjury trial, and entry of a final judgment. Exercise of this jurisdiction by a magistrate judge is, however, permitted only if all parties voluntarily consent.

You may, without adverse substantive consequences, withhold your consent, but this will prevent the court's jurisdiction from being exercised by a magistrate judge. If any party withholds consent, the identity of the parties consenting or withholding consent will not be communicated to any magistrate judge or to the district judge to whom the case has been assigned.

An appeal from a judgment entered by a magistrate judge may be taken directly to the United States Court of Appeals for the Fourth Circuit in the same manner as an appeal from any other judgment of a district court.

JULIA C. DUDLEY, CLERK

By: s/ S. Taylor  
Deputy Clerk

If you desire to consent to this action please indicate by signing below and returning the form to the Clerk's Office within 15 days from the date of this Notice.

Signature

Printed Name

Date

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Counsel for:

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**DO NOT RETURN THIS FORM ELECTRONICALLY. IF RETURNED, PAPER DOCUMENT MUST BE FILED.**